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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,703	03/17/2004	Ekawat Vitoorapakorn	602193-9US (A1437-343PO)	4819
570	7590	03/09/2006	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			KENNEDY, JOSHUA T	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/802,703	Applicant(s) VITOORAPAKORN ET AL.	
	Examiner Joshua T. Kennedy	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-10 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6,032,939) in view of Price (US 6,196,777).

As to Claims 1-4, 9, and 10. Chen discloses a fastening assembly having a base member (12) for engaging a clamp member (11) through the bed liner hole, the base member including a back surface (121) that is pressed by the clamp member (11) with the bed liner wall (2) and the bed rail (3) in between, the base member having at least one extended direction control rod (113) extending generally perpendicularly from the back surface for insertion through the bed liner hole (Fig 3; Examiner notes that both clamping surfaces, 111 and 121, are perpendicular to the control rod 113);

the clamp member having at least one hole (123) for insertion of the extended direction control rod of the base member therein, the hole of the clamp member can be moved along the extended direction control rod of the base member when the clamp

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member is assembled to the base member, the clamp member able to be inserted through the hole in the bed liner wall when the clamp member is engaged with the base member;

a screw (13) for securing the base member to the clamp member;

a ring (114) installed in an end of an internal threaded hole (115) of the clamp member;

a force absorbing rod (123; Examiner considers the slot in base member as a force absorbing rod supporting the lower edge of the clamp member) extending therefrom to support the lower edge of the clamp member; and

a contact plate extending from both sides (113; Examiner considers the extended dovetail surface of the direction control rod to be a "contact plate").

However, Chen does not show a tie-down ring for attaching to the base member.

With respect to the location of the direction control rod. Since there are only 2 possible locations for the rod (on either the clamp or base member), it would have been obvious to one of ordinary skill in the art to provide the base member with the direction control rod (instead of the clamp member), thus providing the clamp portion with the corresponding hole (which is currently provided on the base member) that would in turn, extend from a first side facing the base member to a second side facing away from the base member in an assembled position just like the control rod (113; Fig 2), as disclosed, does now. Hence making it a through hole. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design

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consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Price teaches a tie-down ring for attaching to the base member for use as a vehicular cargo member allowing “the clamp to hold a strap, rope, belt of other kind of load securing tie” (Col 3, lines 48-9). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the clamp device of Chen to have the tie down ring of Price because it would allow the clamp to hold a strap, rope, belt of other kind of load securing tie.

As to Claim 5. Chen does not disclose a rubber pad for attaching to the clamp member being placed between the back member and the inner surface of the bed rail in an assembled position.

Price teaches the clamping member having a rubber pad (69) “positioned between the clamping plate and the flat upper extremity of the side of the truck bed in order to insulate the paint on the truck bed from being damaged by contact with the clamping plate” (Col, 4 Lines 22-26). It would have been obvious to one of ordinary skill in the art to place a rubber pad as taught by Price between the back member and the inner surface of the bed rail as taught by Chen because it is well known in the art to so in order to insulate the paint on the truck bed from being damaged by contact with the clamping plate, whether it is located on the inner or outer surface of the truck bed.

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Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Price, further in view of Eby (US 5,586,373)

Chen in view of Price discloses a fastening assembly substantially as claimed but do not show a supporting plate for attaching to the inner surface of the bed rail.

Eby teaches a bed liner clamping assembly having an inner support flange 56 secured to both the side rail and the inner surface of the bed rail to serve as a reinforcing member so as not to deform said bed rail. It would have been obvious to one of ordinary skill in the art to modify the fastening assembly of Chen in view of Price to include the inner support flanges as taught by Eby because it reinforces the rail member against deformation during the clamping operation.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Price and Eby, further in view of Masters (US 5,314,964).

Chen in view of Price and Eby as advanced about disclose a fastening assembly significantly as claimed but do not claim the supporting plate having double sided adhesive tape nor having spring clips capable of attaching the supporting plate to the inner surface of the bed rail.

Masters teaches an assembly having a double-sided adhesive tape (38) and a spring clip (16) capable of attaching a supporting plate (14) to the inner surface of the bed rail; the adhesive providing a seal and ensuring proper alignment between the plate and the member and the spring clip providing a second fastening means of the plate to the bed rail (Col 2, Lines 63-64; Col 4, Lines 30-34; Figure 2). Accordingly, it would

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have been obvious to one having ordinary skill in the art at the time the invention was made to modify an assembly as disclosed by Price to have an adhesive and clip to secure a supporting plate as taught by Masters in order to provide a seal and ensure proper alignment between the plate and the bed rail prior to tightening bolt.

Response to Arguments

Applicant's arguments filed 2/7/2006 have been fully considered but they are not persuasive.

As to Claim 1, Applicant argues that:

The modified clamp of Chen in view of Price would not include a fastening assembly including a base member with a control rod extending generally perpendicularly from a back surface that presses a clamp member with a bed liner wall and bed rail therebetween; [or]... a through hole extending through the clamp member from a first side to a second side into which the control rod is inserted, wherein the first side is facing the base member and the second side is facing away from the base member in an assembled position... and that the dovetail-shaped insertion block... would not extend generally perpendicularly from a back surface.

Examiner respectfully disagrees as to Claim 1, because the fastening assembly of Chen in view of Price includes all of the aforementioned features. The control rod (113) of Chen, if the components were reversed, would be located on the base member which would in turn be considered to extend perpendicularly from a back surface of the base member. Thus, there would be a corresponding hole on the clamp member (separate from the hole for the threaded member), which would through the member and extend from a first side facing the base member to a second side facing away from the base member in an assembled position.

As to Claims 6-8, Applicant argues that:

One having ordinary skill in the art would not modify Chen in view of Price and further in view of Eby or Masters to include any of these features.

Examiner respectfully disagrees with respect to claims 6-8. This statement is an unsubstantiated conclusion. Merely because each feature is not anticipated does not mean that the combination is non-obvious.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTK
2/22/2006

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is fluid and cursive, with the first name "Daniel" and last name "Stodola" clearly legible.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600